DAVID D. BEAL
GARY WILLIAMS
AND MICHAEL STONE

IBLA 84-831, IBLA 84-844 Decided December 23, 1985

Appeals from decisions of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring unpatented mining claims null and void ab initio and rejecting location notices filed for recordation. AA 41611 through AA 41620.

Dismissed in part, vacated in part, and remanded.

1. Administrative Practice -- Appeals -- Practice Before the Department: Persons Qualified to Practice -- Rules of Practice: Appeals: Dismissal

   An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal. Where the record does not show the party presenting the appeal is qualified under the regulations, the appeal will be dismissed.

2. Mining Claims: Lands Subject to -- Regional Corporation Selections

   The "notation" or "tract book" rule may not be invoked to attribute a segregative effect to a regional corporation selection filed under authority of sec. 12(a)(1) or 12(c)(3) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611(a)(1), (c)(3) (1982), where the implementing regulations of the Department do not provide that the filing of such selection application segregates the land from other appropriation.

APPEARANCES: David D. Beal, pro se; Gary Williams and Michael Stone, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Gary Williams and Michael Stone jointly appeal from several decisions of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), dated July 16 and 17, 1984, rejecting recordation filings for placer mining

claims Bedrock Creek #17 through #22 (AA 41611 through AA 41616) and declaring the claims null and void because they had been located on lands segregated from mineral entry. David D. Beal appeals from a similar decision of the Anchorage District Office, BLM, dated July 24, 1984, involving the adjoining mining claims Bedrock Creek #23 through #26 (AA 41617 through AA 41620). Review of these separate appeals has been consolidated because of the similarity of facts and issues.

The claims at issue were located by Phillips Robinette and Christine Crouch on December 12, 1980, and embrace land in sec. 18, T. 9 N., R. 2 W., Seward Meridian, Alaska (Chugach National Forest). Copies of the notices of location were filed with BLM on December 22, 1980, pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and 43 CFR Subpart 3383. In 1981, Bedrock #21 (AA 41615) was conveyed to Stone and Bedrock #23 through #26 were transferred to Beal. Williams acquired Bedrock #20 (AA 41614) in 1982. 1/ In the appealed decisions, BLM held the claims at issue embrace lands which were unavailable for mineral entry at the time of location by reason of the "notation" rule. BLM's application of the rule was based upon selection application (AA-8098-36) filed by Cook Inlet Region, Inc. (CIRI) on December 16, 1975, and relinquished on February 13, 1981. Although BLM concluded the selection was invalid, it held the notation of CIRI's selection application upon the public land records segregated the entire township from mineral entry.

In their joint statement of reasons, Williams and Stone state they "had no reasonable way of ascertaining that this land was [not open] for locating of claims." In his statement of reasons, 2/ Beal alleges that on several occasions BLM affirmed the validity of his claims. Beal asserts substantial exploration and development costs made in reliance on BLM's statements will be lost if the claims are now determined to be invalid and argues the Department should indemnify him and other claimants for gross negligence perpetrated by BLM employees.

1/ The record indicates the following parties to be the owners of the balance of the claims:

Owner	Claim Name	MCR Number
Art Manginelli	Bedrock Creek #17	AA 41611
Russell Bevans	Bedrock Creek #18	AA 41612
Otto Byars	Bedrock Creek #19	AA 41613
Ronald Wood	Bedrock Creek #22	AA 41616

2/ The statement of reasons received from Beal in this appeal was a duplicate copy of the statement of reasons filed in IBLA 84-833, an appeal of appellant's claims in T. 10 N., R. 2 W., Seward Meridian, declared null and void by BLM. The statement of reasons identified the appeals to involve the "Hope mining claims," apparently meaning appellant's claims near Hope, Alaska. The claims at issue in this appeal were not specifically identified nor issues peculiar to them addressed in the statement of reasons. Since the justiciable issues and facts for this appeal differ from IBLA 84-833, they are reviewed separately.

[1] Before we address the issue of BLM's application of the notation rule, we must address the joint appeal filed by Williams and Stone. The appeal initially states "In accordance with BLM form 1842-1, this letter is our notice of appeal on the BLM decision: 3842(014), claim numbers AA 041611 through AA 041616." The record contains an individual decision letter issued by BLM for each of the six claims represented by MCR numbers, AA-41611 through AA 41616. None of the decision letters refer to the other five claims. Based upon the statement made in the notice of appeal, BLM assumed appellants intended to appeal all six decisions. However, case files for the claims do not contain any documents which would indicate Williams or Stone had an interest in any of the claims except Bedrock Creek #20 and #21 (AA 41614 and AA 41615). Under Departmental regulation, 43 CFR 4.410, parties who have been adversely affected by a BLM decision have the right of appeal to this Board. In addition, an adversely affected party may be represented by an attorney or agent, but such representative must be qualified to practice before the Department. If one of the two requirements is not met the appeal is subject to dismissal. Ganawas Corp., 85 IBLA 250 (1985); Robert N. Caldwell, 79 IBLA 141 (1984). Appellants did not show in their statement of reasons that they were adversely affected by BLM's decisions with respect to Bedrock Creek #17, #18, #19, and #22 or that they were qualified to practice before the Department on behalf of the owners of those claims. By order of the Board dated October 28, 1985, appellants were provided an opportunity to tender evidence of interest or that they qualified to practice before the Department. However, a response was not forthcoming within the period specified. Because the record does not substantiate a basis for Williams and Stone's appearance before the Board on behalf of the owners of the Bedrock Creek #17, #18, #19, and #22 mining claims, the appeal must be dismissed with respect to those four claims. See Robert G. Young, 87 IBLA 349 (1985).

[2] The primary issue presented by these appeals is BLM's application of the "notation" or "tract book" rule to a determination of the validity of appellants' mining claims. Under this rule, after official public land records have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, the land is segregated from those conflicting uses until the notation is removed. See B. J. Toohey, 88 IBLA 66, 92 I.D. 317 (1985). Copies of the master title plat for T. 9 N., R. 2 W., Seward Meridian, supplied by BLM bear the notation "AA 8098-36 REG/SEL APLN ENTIRE TP."

A key factor in an invocation of the notation rule is that the devotion of land noted on the official records would normally exclude other uses under a readily identifiable segregative authority. Id. The segregative effect of an Alaska Native selection application differs according to the authority under which it was submitted. Cf. 43 CFR Subparts 2652 and 2653. See David Cavanagh, 89 IBLA 285, 92 I.D. 564 (1985). Sections 12(a)(1) and (c)(3) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1611(a)(1), (c)(3) (1982), allow a regional corporation like CIRI to select lands to satisfy its statutory entitlements. See 43 CFR 2652.0-3. However, unlike a state or other similar selection, neither the Act nor the implementing regulations, Subpart 2652, attribute a segregative effect to the filing of such regional corporation selection application. See also 43 CFR 2091.6-4, 2627.4(b). Cf. 43 CFR Part 2620, Subpart 2653.

The purpose of the notation rule is to afford the public equal opportunity to public lands. Where the authority for a selection or an application denoted on public land records imputes a segregation of the lands identified, the ordinary citizen contemplating a proposed use of those public lands would assume they were unavailable upon reviewing the public land records. See B. J. Toohey, supra. The Board, however, held in David Cavanagh, supra, that the notation rule cannot be invoked on the basis of a regional corporation selection application filed pursuant to 43 CFR Subpart 2652. Since the knowledge imputed to the public at large is that no segregative effect attaches, the notation of such application on the master title plat and other records would not logically deter attempted appropriations of the lands embraced by the selection. Therefore, the notation rule should not apply to CIRI's selection application. BLM's decisions declaring the Bedrock Creek #20, #21, and #23 through #26 mining claims null and void and rejecting recordation filings must, therefore, be vacated. Upon remand, appellants should be afforded an opportunity to comply with the mining claim recordation statutes. See Ed Bilderback, 89 IBLA 263 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed are dismissed in part, vacated in part, and remanded.

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R. W. Mullen
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

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Gail M. Frazier
Administrative Judge